



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,705	03/30/2001	David M. Berezowski	UV-193	7437
75563 7590 11/17/2008 ROPES & GRAY LLP PATENT DOCKETING 39/361 1211 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8704				
EXAMINER				
SHANG, ANNAN Q				
ART UNIT		PAPER NUMBER		
2424				
MAIL DATE		DELIVERY MODE		
11/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/823,705
Filing Date: March 30, 2001
Appellant(s): BEREZOWSKI ET AL.

MATTHEW S. BERTENTHAL
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/08/08 appealing from the Office action mailed 03/22/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,637,029	MAISSEL ET AL	10-2003
6,539,548	HENDRICKS ET AL	3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1-6, 9-11, 13-46, 50-56, 60-85, 88-90, 92-135, 139-164, 167-169, 171-204, 208-214, 218-237 are rejected under 35 U.S.C. 102(e) as being anticipated by **Maissel et al (6,637,029)**.

As to claims 1, 29 and 51, note the **Maissel** reference discloses figures 1-2 and 9, discloses an intelligent electronic program guide (EPG) and further discloses a method: for measuring audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application, comprising,

A user input device (Remote Control, col.10, lines 54-62); A display device (Television, col.9, lines 59-col.10, line 21);

Receiving indications (Headend 'HE' 340) of playbacks of the recorded program from a plurality of audience members (figs.1, 8, 9, col.2, line 65-col.3, line 8, col.5, line 51-col.6, line 19, col.8, lines 30-45, col.18, lines 29-66 and col.19, lines 1-23), HE monitoring agent, monitors in real time basis information on a proportion or percentage of audiences viewing a particular program such as NVOD, MOVIE, etc., and transmits viewer behavior data or on-screen alerts information of proportion of an audience currently viewing the program;

Updating (HE-340) audience size information for the recorded program in response to receiving the indications from the plurality of audience members, where the calculating audience size information for a program corresponding to at least one of the one or more listings, where the calculating is based on a graded approach of assigning a predetermined quantity of points to each of a plurality of actions performed by a plurality of audience members (col.5, line 51-col.6, line 19, col.8, line 30-45, col.13, lines 9-34, col.19, lines 16-49 and line 58-col.20, line 1+); and providing the providing the updated audience size information to at least one user within an interactive television application (col.5, line 51-col.6, line 19, col.8, line 30-45, col.19, lines 16-49 and line 58-col.20, line 1+), note that HE monitoring agent, monitors in real time basis information on a proportion or percentage of audiences viewing a particular program such as NVOD, MOVIE, etc., and transmits viewer behavior data or on-screen alerts information of proportion of an audience currently viewing the program and further transmits behavior data or on-screen alerts of a program not currently being viewed by a viewer,

in real-time to subscribers upon receiving and indications from the subscriber(s) as to the playbacks of recorded program.

As to claim 2, Maissel further discloses where the recorded program is audio program (col.10, lines 23-66, col.11, lines 8-64 and col.21, lines 34-64).

As to claim 3, Maissel further discloses where the recorded program is television program (col.10, lines 23-62 and col.11, lines 8-64).

As to claim 4, Maissel further discloses where the recorded program is PPV program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 5, Maissel further discloses where the recorded program is VOD program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 6, Maissel further discloses where the recorded program is NVD program (col.10, lines 23-62, col.11, lines 8-64 and col.19, lines 1-15).

As to claim 9, Maissel further discloses updating audience information based on the number of times each audience member played back the recorded program (col.11, lines 8-64 and col.19, lines 1-49)

As to claims 10 and 11, Maissel further discloses receiving an indication for a user interactions where such action controls how the how the recorded program is played back, executing the user's interactions in response to receiving the request and updating audience information based on the user's interactions comprises actions such as record and play, watched programs, purchased programs, etc., (col.11, lines 8-64, col.16, lines 26-63, col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 13, Maissel further discloses where the ITV application is an ITV program guide (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 14, Maissel further discloses providing an interactive indicator that notifies the user when the audience information is available, where the interactive indicator comprises content selected from text, graphics, audio, video and animation (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 15, Maissel further discloses allowing the user to compare programs based on audience information distributed to the user for the programs (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 16, Maissel further discloses providing the audience information for a portion of the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 17, Maissel further discloses where the portion is a scene within the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59)

As to claim 18, Maissel further discloses providing the audience information for genre of programs (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 19, Maissel further discloses providing the audience information for the recorded program based on a time slot (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 20, Maissel further discloses distributing audience information to a plurality of users and audience information for a subset of plurality of users to the user (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 21, Maissel further discloses where the subset of plurality of users is defined on user demographics (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claims 22-23, Maissel further teaches monitoring the users action on flip display or channel change and browsing display of surfing (col. 16, lines 26-36 and col. 17, lines 17-50).

As to claim 24, Maissel further discloses providing the audience information to the user in program listings display (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 25, Maissel further discloses updating the audience information based on a user profile of a user from which the indication was received related to the playback of the recorded program (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

As to claim 26-28, Maissel further discloses calculating audience size for the recorded program, based on weightings to playback information and accessing a table of grading information for assigning points to playback information (col.18, lines 35-67 and col.19, line 9-col.20, line 59).

Claim 30 is met as previously discussed with respect to claim 2.

Claim 31 is met as previously discussed with respect to claim 3.

Claim 32 is met as previously discussed with respect to claim 4.

Claim 33 is met as previously discussed with respect to claim 5.

Claim 34 is met as previously discussed with respect to claim 6.

Claim 35 is met as previously discussed with respect to claim 14.

Claim 36 is met as previously discussed with respect to claim 15.

Claim 37 is met as previously discussed with respect to claim 16.

Claim 38 is met as previously discussed with respect to claim 17.

Claim 39 is met as previously discussed with respect to claim 18.

Claim 40 is met as previously discussed with respect to claim 19.

Claim 41 is met as previously discussed with respect to claim 20.

Claim 42 is met as previously discussed with respect to claim 21.

Claims 43-44 are met as previously discussed with respect to claims 22-23.

Claim 45 is met as previously discussed with respect to claim 24.

Claim 46 is met as previously discussed with respect to claim 25.

Claim 50 is met as previously discussed with respect to claim 13.

Claim 51 is met as previously discussed with respect to claim 2.

Claim 52 is met as previously discussed with respect to claim 2.

Claim 53 is met as previously discussed with respect to claim 3.

Claim 54 is met as previously discussed with respect to claim 4.

Claim 55 is met as previously discussed with respect to claim 5.

Claim 56 is met as previously discussed with respect to claim 6.

Claim 60 is met as previously discussed with respect to claim 14.

Claim 62 is met as previously discussed with respect to claim 15.

Claim 63 is met as previously discussed with respect to claim 16.

Claim 64 is met as previously discussed with respect to claim 17.

Claim 65 is met as previously discussed with respect to claim 19.

Claim 66 is met as previously discussed with respect to claim 20.

Claim 67 is met as previously discussed with respect to claim 21.

Claims 68-69 are met as previously discussed with respect to claims 22-23.

Claim 70 is met as previously discussed with respect to claim 24.

Claim 71 is met as previously discussed with respect to claim 9.

Claim 72 is met as previously discussed with respect to claims 10-11.

Claim 73 is met as previously discussed with respect to claims 10-11.

Claim 74 is met as previously discussed with respect to claims 10-11.

Claim 75 is met as previously discussed with respect to claims 10-11.

Claim 76 is met as previously discussed with respect to claims 10-11.

Claims 77-79 are met as previously discussed with respect to claims 26-28.

As to claims 80, 108, 130, 159, 187 and 209, Maissel further discloses "a system: for measuring audience information based on playbacks of a recorded program, for providing audience information with program listings in an interactive television application, for measuring audience information for upcoming program in an interactive application..." as previously discussed with respect to the rejection of claim 1.

Claim 81 is met as previously discussed with respect to claim 2.

Claim 82 is met as previously discussed with respect to claim 3.

Claim 83 is met as previously discussed with respect to claim 4.

Claim 84 is met as previously discussed with respect to claim 5.

Claim 85 is met as previously discussed with respect to claim 6.

Claim 88 is met as previously discussed with respect to claim 9.

Claim 89 is met as previously discussed with respect to claim 10.

Claim 90 is met as previously discussed with respect to claim 11.

Claim 92 is met as previously discussed with respect to claim 13.

Claim 93 is met as previously discussed with respect to claim 14.

Claim 94 is met as previously discussed with respect to claim 15.

Claim 95 is met as previously discussed with respect to claim 16.

Claim 96 is met as previously discussed with respect to claim 17.

Claim 97 is met as previously discussed with respect to claim 18.

Claim 98 is met as previously discussed with respect to claim 19.

Claim 99 is met as previously discussed with respect to claim 20.

Claim 100 is met as previously discussed with respect to claim 21.

Claims 101-102 are met as previously discussed with respect to claims 22-23.

Claim 103 is met as previously discussed with respect to claim 24.

Claim 104 is met as previously discussed with respect to claim 25.

Claims 105-107 are met as previously discussed with respect to claims 26-28.

Claim 109 is met as previously discussed with respect to claim 2.

Claim 110 is met as previously discussed with respect to claim 3.

Claim 111 is met as previously discussed with respect to claim 4.

Claim 112 is met as previously discussed with respect to claim 5.

Claim 113 is met as previously discussed with respect to claim 6.

Claim 114 is met as previously discussed with respect to claim 14.

Claim 115 is met as previously discussed with respect to claim 15.

Claim 116 is met as previously discussed with respect to claim 16.

Claim 117 is met as previously discussed with respect to claim 17.

Claim 118 is met as previously discussed with respect to claim 18.

Claim 119 is met as previously discussed with respect to claim 19.

Claim 120 is met as previously discussed with respect to claim 20.

Claim 121 is met as previously discussed with respect to claim 21.

Claim 124 is met as previously discussed with respect to claim 24.

Claim 125 is met as previously discussed with respect to claim 25.

Claim 129 is met as previously discussed with respect to claims 13.

Claim 131 is met as previously discussed with respect to claim 2.

Claim 132 is met as previously discussed with respect to claim 3.

Claim 133 is met as previously discussed with respect to claim 4.

Claim 134 is met as previously discussed with respect to claim 5.

Claim 135 is met as previously discussed with respect to claim 6.

Claim 139 is met as previously discussed with respect to claim 14.

Claim 140 is met as previously discussed with respect to claim 15.

Claim 141 is met as previously discussed with respect to claim 16.

Claim 142 is met as previously discussed with respect to claim 17.

Claim 143 is met as previously discussed with respect to claim 18.

Claim 144 is met as previously discussed with respect to claim 19.

Claim 145 is met as previously discussed with respect to claim 20.

Claim 146 is met as previously discussed with respect to claim 21.

Claims 147-148 are met as previously discussed with respect to claims 22-23.

Claim 149 is met as previously discussed with respect to claim 24.

Claim 150 is met as previously discussed with respect to claims 10-11.

Claim 151 is met as previously discussed with respect to claims 10-11.

Claim 152 is met as previously discussed with respect to claims 10-11.

Claim 153 is met as previously discussed with respect to claims 10-11.

Claim 154 is met as previously discussed with respect to claims 10-11.

Claim 155 is met as previously discussed with respect to claim 25.

Claims 156-158 are met as previously discussed with respect to claims 26-28.

Claim 160 is met as previously discussed with respect to claim 2.

Claim 161 is met as previously discussed with respect to claim 3.

Claim 162 is met as previously discussed with respect to claim 4.

Claim 163 is met as previously discussed with respect to claim 5.

Claim 164 is met as previously discussed with respect to claim 6.

Claim 167 is met as previously discussed with respect to claim 9.

Claim 168 is met as previously discussed with respect to claim 10.

Claim 169 is met as previously discussed with respect to claim 11.

Claim 171 is met as previously discussed with respect to claim 13.

Claim 172 is met as previously discussed with respect to claim 14.

Claim 173 is met as previously discussed with respect to claim 15.

Claim 174 is met as previously discussed with respect to claim 16.

Claim 175 is met as previously discussed with respect to claim 17.

Claim 176 is met as previously discussed with respect to claim 18

Claim 177 is met as previously discussed with respect to claim 19.

Claim 178 is met as previously discussed with respect to claim 20.

Claim 179 is met as previously discussed with respect to claim 21.

Claims 180-181 are met as previously discussed with respect to claims 22-23.

Claim 182 is met as previously discussed with respect to claim 24.

Claim 183 is met as previously discussed with respect to claim 25.

Claims 184-186 are met as previously discussed with respect to claims 26-28.

Claim 188 is met as previously discussed with respect to claim 2.

Claim 189 is met as previously discussed with respect to claim 3.

Claim 190 is met as previously discussed with respect to claim 4.

Claim 191 is met as previously discussed with respect to claim 5.

Claim 192 is met as previously discussed with respect to claim 6.

Claim 193 is met as previously discussed with respect to claim 14.

Claim 194 is met as previously discussed with respect to claim 15.

Claim 195 is met as previously discussed with respect to claim 16.

Claim 196 is met as previously discussed with respect to claim 17.

Claim 197 is met as previously discussed with respect to claim 18.

Claim 198 is met as previously discussed with respect to claim 19.

Claim 199 is met as previously discussed with respect to claim 20.

Claim 200 is met as previously discussed with respect to claim 21.

Claims 201-202 are met as previously discussed with respect to claims 22-23.

Claim 203 is met as previously discussed with respect to claim 24.

Claim 204 is met as previously discussed with respect to claim 25.

Claim 208 is met as previously discussed with respect to claims 13.

Claim 210 is met as previously discussed with respect to claim 2.

Claim 211 is met as previously discussed with respect to claim 3.

Claim 212 is met as previously discussed with respect to claim 4.

Claim 213 is met as previously discussed with respect to claim 5.

Claim 214 is met as previously discussed with respect to claim 6

Claim 218 is met as previously discussed with respect to claim 14.

Claim 219 is met as previously discussed with respect to claim 15.

Claim 220 is met as previously discussed with respect to claim 16.

Claim 221 is met as previously discussed with respect to claim 17.

Claim 222 is met as previously discussed with respect to claim 18.

Claim 223 is met as previously discussed with respect to claim 19.

Claim 224 is met as previously discussed with respect to claim 20.

Claim 225 is met as previously discussed with respect to claim 21.

Claims 226-227 are met as previously discussed with respect to claims 22-23.

Claim 228 is met as previously discussed with respect to claim 24.

Claim 229 is met as previously discussed with respect to claims 10-11.

Claim 230 is met as previously discussed with respect to claims 10-11.

Claim 231 is met as previously discussed with respect to claims 10-11.

Claim 232 is met as previously discussed with respect to claims 10-11.

Claim 233 is met as previously discussed with respect to claims 10-11.

Claim 234 is met as previously discussed with respect to claim 25.

Claims 235-237 are met as previously discussed with respect to claims 26-28.

B. Claims 8, 58, 87, 137, 166 and 216 rejected under 35 U.S.C. 103(a) as being unpatentable over **Maissel et al (6,637,029)** as applied to claims 1, 51, 80, 130, 159 and 209 above and in view of **Hendricks et al (6,539,548)**.

As to claims 8, 58, 87, 137, 166 and 216, Maissel fails to explicitly teach updating market share of the recorded programs.

However, note **Hendricks** teaches analyzing rating for television shows to determine the appropriate schedule or program lineup to gain market share and revenue from advertising.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Hendricks into the system Maissel to provide interesting programs to users, to gain a higher market share than other competitors.

(10) Response to Argument

The Examiner respectfully disagrees that the rejection should be reversed.

With respect to claims 1-6, 11, 13-28, 80-85, 89, 92-107, 159-164, 169 and 171-186 (see page 13+, paragraph A of Appellant's Brief), rejected under 35 U.S.C. 102(e) as being anticipated by **Maissel et al (6,637,029)**, Appellant discusses the claimed invention and parts of the disclosure which are not in the claim limitations and further

argues, with respect to independent claims 1, 80 and 159, that "...Maissel does not show or suggest updating audience size information for recorded programs" that "Maissel also does not show updating audience size information for recorded program in response to receiving indications of playbacks of the recorded program from audience members" that "...nothing is Maissel that shows using its monitoring agent to calculate audience information" etc. (see page 13+, paragraph A of Appellant's Brief).

In response, Examiner disagrees. Examiner, notes Appellant's argues, however, Maissel discloses a monitoring agent that monitors viewing behavior of user(s) with respect to pay TV systems and non-pay or free TV systems (col.2, line 65-col.3, line 8 and col.19, lines 1-15), generates customizes schedule for user(s) and provides audiences information to user(s) with respect to programs currently being watch or not watched (col.5, line 56-col.6, line 18, col.8, lines 30-45 and col.19, lines 1-15). The Pay program, non-pay or free programs, popular programs (col.12, line 67), movies and NVD (col.19, lines 1-15), etc., are all recorded programs and the monitoring agent monitors user(s) behavior, actions or indications as to playbacks of these recorded programs at the headend, generates these analysis for presentation to at least one viewer (col.19, lines 1-49). Furthermore the viewing behavior data includes various viewer actions, such as, length of portions of viewed programs, preference strength (how strongly a certain program or type of program is preferred), percentage of all occurrences of the programs that were viewed, channel surfing behavior (actions of the viewers), where the viewer behavior data is determined based on these actions, compared to a predetermined threshold (col.4, lines 30-51 and col.8, lines 30-45) and

further uses rule-based abstracted method to generate various on-screen alerts to display behavior data or audience data of current programs being watched and programs not being watched (which meets the claim limitation "calculating audience size information...based on a graded approach of assigning a predetermined quantity of points to each of a plurality of actions performed by...audience members..."). Maissel further discloses that the audience viewing information includes "...indication of a proportion of an audience currently viewing a program...the program includes a program currently being viewed by a viewer...the program includes a program not currently being viewed by a viewer..."(col.5, line 51-col.6, line 19). Hence the 102(e) rejection is proper, meets all the claims limitations and should be sustained.

With respect to claims 29-46, 50, 108-125, 129, 187-204 and 208 (see page 17+ of Appellant's Brief), Appellant discusses the claimed invention and further argues, with respect to independent claims 29, 108 and 187, that "...Maissel does not show or suggest calculating audience size information by assigning points to user actions" that "Maissel also does not show or suggest calculating audience size information based on a grade approach of 'assigning a predetermined quantity of points to each of the plurality of actions performed by a plurality of audience members' etc.

In response, Examiner disagrees. Examiner, notes Appellant's argues, however, Maissel discloses a monitoring agent that monitors viewing behavior of user(s) with respect to pay TV systems and non-pay or free TV systems (col.2, line 65-col.3, line 8 and col.19, lines 1-15), generates customizes schedule for user(s) and provides

audiences information to user(s) with respect to programs currently being watch or not watched (col.5, line 56-col.6, line 18, col.8, lines 30-45 and col.19, lines 1-15). The Pay program, non-pay or free programs, popular programs (col.12, line 67), movies and Nvod (col.19, lines 1-15), etc., and the monitoring agent monitors user(s) behavior, actions or indications as to playbacks of these recorded programs at the headend, generates these analysis for presentation to at least one viewer (col.19, lines 1-49). Furthermore the viewing behavior data includes various viewer actions, such as, length of portions of viewed programs, preference strength (how strongly a certain program or type of program is preferred), percentage of all occurrences of the programs that were viewed, channel surfing behavior (actions of the viewers), where the viewer behavior data is determined based on these actions, compared to a predetermined threshold (col.4, lines 30-51 and col.8, lines 30-45) and further uses rule-base abstracted method to generate various on-screen alerts to display behavior data or audience data of current programs being watched and programs not being watched (which meets the claim limitation "calculating audience size information...based on a graded approach of assigning a predetermined quantity of points to each of a plurality of actions performed by...audience members..."). Maissel further discloses that the audience viewing information includes "...indication of a proportion of an audience currently viewing a program...the program includes a program currently being viewed by a viewer...the program includes a program not currently being viewed by a viewer..."(col.5, line 51-col.6, line 19). Hence the 102(e) rejection is proper, meets all the claims limitations and should be sustained.

With respect to claims 51-56, 58, 60-70, 72-79, 130-135, 137, 139-149, 151-158, 209-214, 218-228 and 230-237 (see page 21+, labeled C Group 3 of Appellant's Brief), Appellant discusses the claimed invention and further argues, with respect to independent claims 51, 130 and 209, that "...Maissel does not show or suggest updating audience size information for upcoming programs" that "The Examiner's rejection does not address Appellant's claimed feature of updating audience size information based on users viewing upcoming programs" etc.

In response, Examiner disagrees. Examiner, notes Appellant's argues, however, the claims limitations do not recite Appellant's arguments of "...based on users viewing upcoming programs." The claims limitations recites, "receiving indications from a plurality of...members to perform actions related to upcoming program...updating audience size information for the upcoming program in response to receiving the indications..." which were addressed in the office action. Maissel discloses a monitoring agent that monitors viewing behavior of user(s) with respect to pay TV systems and non-pay or free TV systems (col.2, line 65-col.3, line 8 and col.19, lines 1-15), generates customizes schedule for user(s) and provides audiences information to user(s) with respect to programs currently being watch or not watched (col.5, line 56-col.6, line 18, col.8, lines 30-45 and col.19, lines 1-15). The Pay program, non-pay or free programs, popular programs (col.12, line 67), movies and NVD (col.19, lines 1-15), etc., and the monitoring agent monitors user(s) behavior, actions or indications as to playbacks of these recorded programs at the headend, generates these analysis for

presentation to at least one viewer (col.19, lines 1-49). Furthermore the viewing behavior data includes various viewer actions, such as, length of portions of viewed programs, preference strength (how strongly a certain program or type of program is preferred), percentage of all occurrences of the programs that were viewed, channel surfing behavior (actions of the viewers), where the viewer behavior data is determined based on these actions, compared to a predetermined threshold (col.4, lines 30-51 and col.8, lines 30-45) and further uses rule-base abstracted method to generate various on-screen alerts to display behavior data or audience data of current programs being watched and programs not being watched. Maissel further discloses that the audience viewing information includes "...indication of a proportion of an audience currently viewing a program...the program includes a program currently being viewed by a viewer...the program includes a program not currently being viewed by a viewer (upcoming programs)..."(col.5, line 51-col.6, line 19). Hence the 102(e) rejection is proper, meets all the claims limitations and should be sustained.

With respect to claims 9, 88 and 167 (see page 23+, labeled D Group 4 of Appellant's Brief), Appellant discusses the claim limitations and further argues that Maissel does not show or suggest updating audience size information based on the number of times each audience member plays back the recorded program.

In response, Examiner disagrees. Examiner notes Appellant arguments, however as discussed above with respect to the independent claims, Maissel monitors the user(s) viewing habits including the number of times the user plays back a recorded

program and bills the user(s) according. Hence the rejection is proper, meets all the claims limitations and should be sustained.

With respect to claims 10, 89 and 168 (see page 24+, labeled E Group 5 of Appellant's Brief), Appellant discusses the claim limitations and further argues that Maissel does not show or suggest updating audience size information based on a user-identified action.

In response, Examiner disagrees. Examiner notes Appellant arguments, however as discussed above with respect to the independent claims, Maissel teaches the claims limitations, i.e., recording, playing back of recorded programs, etc. Hence the rejection is proper, meets all the claims limitations and should be sustained.

With respect to claims 71, 150 and 229 (see page 25+, labeled F Group 6 of Appellant's Brief), Appellant discusses the claim limitations and further argues that Maissel does not show or suggest updating audience size information based on the number of times the plurality of audience members perform actions related to an upcoming program.

In response, Examiner disagrees. Examiner notes Appellant arguments, however as discussed above with respect to the independent claims, Maissel teaches the claims limitations. Hence the rejection is proper, meets all the claims limitations and should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Annan Q Shang/

Primary Examiner, Art Unit 2424

Annan Q. Shang

Conferees:

/Annan Q Shang/

Primary Examiner, Art Unit 2424

/Chris Kelley/

Supervisory Patent Examiner, Art Unit 2424

Chris S. Kelley

Vivek Srivastava

/Vivek Srivastava/

Supervisory Patent Examiner, Art Unit 2426

FISH & NEAVE IP GROUP

ROPES & GRAY LLP, CUSTOMER NO., 1473

1211 AVENUE OF THE AMERICA

NEW YORK, NEW YORK 10036-8704